

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

James Sudberry,

Plaintiff,

v.

Case No. 1:14cv163

Warden Morgan, *et al.*,

Judge Michael R. Barrett

Defendants.

ORDER

This matter is before the Court upon the March 17, 2014 Magistrate Judge's Report and Recommendation ("R&R") recommending that Plaintiff's Motion to Proceed in Forma Pauperis be DENIED and that Plaintiff be ordered to pay the \$400 filing fee. (Doc. 2). Notice was given to the parties under 28 U.S.C. §636(b)(1)(C). Petitioner filed objections to the R&R. (Doc. 4). Petitioner also filed several replies to the R&R. (Docs. 5, 6, 7, 8).

Plaintiff has filed a *pro se* complaint alleging a violation of 42 U.S.C. § 1983. (See Doc. 1). The Magistrate Judge set forth the facts of this case in the R&R, and the same will not be repeated here except to the extent necessary. The Magistrate Judge concluded that under 28 U.S.C. § 1915(g), Plaintiff may not proceed *in forma pauperis*. Plaintiff does not dispute that he has had more than three actions dismissed as frivolous, malicious, or for the failure to state a claim. Instead, Plaintiff argues that the exception to the statute applies because he is in "imminent danger of serious physical injury." However, the Magistrate Judge found that the events in Plaintiff's Complaint took place in

2006. Plaintiff has not disputed this conclusion.

Plaintiff also argues that his filing fee should either be waived entirely or be only \$5.00 because he is filing a habeas claim. However, Plaintiff has not filed petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Plaintiff also requests that this Court appoint counsel in this matter. (Doc. 6, PAGEID # 21). However, “there is no right to counsel in prisoner civil rights cases.” *Bennett v. Smith*, 110 F. App'x 633, 635 (6th Cir. 2004) (citing *Glover v. Johnson*, 75 F.3d 264, 268 (6th Cir. 1996)). Counsel is appointed in a civil proceeding only in exceptional circumstances. *Id.* (citing *Lavado v. Keohane*, 992 F.2d 601, 604-06 (6th Cir. 1993)). Plaintiff has not identified any such circumstances in this instance. Therefore, any request for the appointment of counsel is DENIED.

Based on the foregoing, the March 17, 2014 Magistrate Judge's R&R (Doc. 2) is hereby **ADOPTED**. Accordingly, it is hereby **ORDERED** that:

1. Plaintiff's motion to proceed *in forma pauperis* is DENIED under 28 U.S.C. § 1915(g);
2. Plaintiff is ORDERED to pay the \$400 filing fee within thirty (30) days of entry of this Order;
3. Plaintiff's failure to pay the full filing fee within thirty days will result in the dismissal of his action. See *In re Alea*, 286 F.3d 378, 382 (6th Cir. 2002);
4. This Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that for the foregoing reasons an appeal of this Court's Order would not be taken in good faith. See *McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997).

IT IS SO ORDERED.

/s/ Michael R. Barrett
Michael R. Barrett, Judge
United States District Court